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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY F. CHASE,

Defendant and Appellant.

A146343

(San Francisco County
Super. Ct. No. 221554)

Defendant Timothy F. Chase pled guilty to one count of felony assault by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(4)), after he was captured on a surveillance video kicking and stomping a homeless person in the head as she was lying on the ground.¹ The sole issue on appeal is whether the trial court abused its discretion in requiring him to pay the victim's medical bill as a restitutionary condition of his probation when she did not seek the treatment but was brought to the emergency room by a police officer almost two weeks after the assault. We affirm.

BACKGROUND

We briefly summarize the facts of the underlying crime as set out in the San Francisco Probation Department's report prepared for the sentencing in this case, which is itself based on the police incident report that was the factual basis for defendant's guilty plea.

¹ All statutory references are to the Penal Code.

On November 6, 2013, officers received a call from an unknown witness regarding an assault between an unknown man (later identified as defendant) and an unknown woman victim. A surveillance video depicting the defendant “repeatedly kicking and stomping the victim in the head as she was lying on the ground” was recovered and shown on the local television news.

On November 11, 2013, the police found a witness who had seen defendant panhandling at 9th and Howard Streets in San Francisco, but did not know his name. On November 12, an officer located “the victim [Elizabeth Murray], who complained of pain to her right side of her head and her left ear.” Two days later, officers received a call from a person who knew defendant. Officers located defendant “in a facility in Oakland” and secured a search warrant. They went to that facility, approached defendant and told him they were investigating a crime from the week before. Defendant was advised of his *Miranda* rights. At first he denied he had been in San Francisco. “The officers informed him of the video which he had seen and he denied it was him.” Eventually he admitted he had been in San Francisco on the night of the incident and confessed, and made “the following admissions: That he might have killed the victim; he was asked what set him off, he replied, ‘it smelled like shit everywhere.’ The smell got to him for the first time. He was relieved that the victim was not dead. He lied at first because he was scared.”

Defendant pled guilty to one felony count of assault with force likely to cause great bodily injury; another assault count was dismissed as part of the plea agreement. Although it was a plea “open” after discussions with the court, a term of the plea was that defendant would “pay restitution to the victim in this case, plus a 15 percent administrative fee for the costs of collection.”

The presentence report prepared by the probation department stated that the “Victim Services Division of the District Attorney’s Off[ice] indicated that the victim has submitted a claim for \$6,872.25 to the Victim Compensation and Government Claims Board for medical services at St. Francis Hospital.” The presentence report went on that the amount of restitution could not be fixed at that time, and requested that the court

retain jurisdiction over the defendant for the purpose of imposing restitution after the losses were determined.

At the sentencing hearing on August 1, 2014, the trial court suspended imposition of sentence and placed defendant on probation for three years, with terms and conditions including that he pay restitution to the victim “to be determined by the probation department, with a 15 percent administrative fee.”

On February 5, 2015, the probation department made a motion for a restitution hearing, having received the victim’s medical billing statement from Saint Francis Memorial Hospital in the amount of \$6,872.25, for services rendered on November 19, 2013. The probation office reported that it had received the bill from a restitution specialist with the State Victim Compensation Board. Defendant filed a written opposition to the motion; the district attorney filed a memorandum in support of it, including the affidavit of Assistant District Attorney Blair McGregor, in which McGregor averred that he had spoken to the victim advocate at the district attorney’s office, Lili Gamero, who stated that on December 20, 2013, she had met with the victim, Elizabeth Murray; that Murray submitted to Gamero a bill from St. Francis Hospital for medical treatment on November 19, 2013 for restitution; and that Gamero “began the process of starting a restitution claim for Ms. Murray by turning the bill over to Patricia Cuellar, the Restitution specialist.”

After a lengthy hearing, the trial court (Judge Donald Sullivan) concluded that “[b]ased on all of the evidence before the Court and arguments, I am ordering the defendant . . . to make restitution to the victim in this case, Elizabeth Murray.” At the urging of defense counsel, the court ordered restitution in the amount of \$4,581.50 (rather than \$6,872.25), taking into account the “prompt pay discount” identified on the victim’s medical bill.

Subsequently, over defense opposition, the trial court made the restitution order into an enforceable civil judgment by signing an Order for Victim Restitution (Judicial Council form CR-110).

This appeal followed.

DISCUSSION

The trial court awarded restitution as a condition of probation under section 1203.1, which provides in part that in granting probation, trial courts “shall provide for restitution in proper cases” and that the restitution order “shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.” (§ 1203.1, subd. (a)(3).)

The discretion to impose restitution where probation has been imposed is broad. “There is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action.” (*People v. Anderson* (2010) 50 Cal.4th 19, 27 (*Anderson*).) A trial court may use any rational method of fixing the amount of restitution which is reasonably calculated to make the victim whole. (*People v. Goulart* (1990) 224 Cal.App.3d 71, 83.)

We review an award of restitution as a condition of probation to determine whether it is “arbitrary or capricious or otherwise exceeds the bounds of reason under the circumstances.” (*Anderson, supra*, 50 Cal.4th at p. 32.) In so doing, we apply the familiar factors set forth in *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) for assessing the validity of a condition of probation. Upon review, “[a] condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality[.]’ ” (*Id.* at p. 486.) “Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.” (*Ibid.*)

The *Lent* “test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) We need not go any further than the first prong, because the restitution here plainly relates to the criminal conduct at issue.

The essence of Defendant’s argument is this: “In this case, while the testimony as to what actually occurred during the assault was not entirely reliable, Chase admitted the assault and was therefore liable for its consequences. [¶] The problem in this case is that it does not appear, and there had never appeared, to be any physical or medical consequences of the incident.” Instead, defendant chalks up the medical bill as costs “incurred as part of the police investigation of the offense and not Appellant Chase’s conduct.” This argument is unconvincing.

First, nothing in the record supports Chase’s position that the testimony was unreliable. In the briefing submitted by the parties on appeal, the underlying facts about how Murray came to be treated at the hospital appear to be taken from the testimony of law enforcement officers at Chase’s preliminary hearing held on January 16, 2014, and are largely undisputed.² In essence, when Officer David Lee first responded to the report of the assault, he came upon a woman he already knew (Murray), who smelled “[l]ightly . . . [o]f an alcoholic beverage.” He examined her for injuries, but couldn’t see any on her face; she was wearing a hooded sweatshirt with the hood up. At the time she said she was fine, and declined medical attention.

Four days later, another officer, Sergeant Sean Frost, investigated the assault further after KTVU, a local television station, showed surveillance camera footage from the incident. Frost eventually located Murray on the street a few days later on November 12. Frost testified that Murray was homeless and a chronic alcoholic. She reported pain on the side of her head and inside her ear. She said she was injured on Market Street, but

² We note that no live witnesses testified at the restitution hearing, nor did defense counsel submit any declarations or documentary evidence. Defendant’s supplemental memorandum in opposition to restitution had a section entitled “Statement of Facts,” without citation to authority or a reporter’s transcript. The initial memorandum in opposition (“Defense Opposition to Restitution Request”) did not have a statement of facts, but it, too, made assertions about Murray’s examination by police officers after the assault. A different judge (Judge Brendan Conroy) presided at the preliminary hearing where the facts that appear to underlie the restitution issue were adduced, and nothing in the record suggests that Judge Sullivan, who issued the restitution order, saw or relied upon the preliminary transcript itself.

gave different explanations as to how she might have been injured, denied having been assaulted within the past week and a half, and did not know how she had hurt her head.

Although Frost called the medics to assess Murray and they “made contact with her,” she would not let herself be taken to the hospital. So Frost took Murray to the Hall of Justice for further inquiry, where he showed her the surveillance video of the incident. She “identified herself as being the person laying on the ground and she started to cry.” She did not recognize defendant in the video. The video showed her being kicked and stepped on while she was on the sidewalk.³ At some point Frost “encouraged her to go and get checked out at the hospital,” but she declined again his offer of assistance that day.

On November 19, Frost sought out Murray to tell her that defendant had been arrested. When he found out she had still not gone to the hospital to be checked, he took her to St. Francis Hospital “to have her medically looked at.” Frost did not recall “what the medical determination was. She was discharged within a few hours of she and I arriving there.”

The medical bill listed total charges of \$9,165 for “emergency room” services, less an “uninsured discount” of \$2,290.75 and a “prompt pay discount” in the same amount. The total amount owed was \$4,581.50, which was the amount of the restitution order.

On this record, it was not an abuse of discretion to order Chase to pay his victim’s hospital bill. Defendant pleaded guilty to assaulting Murray on November 6 with force likely to cause great bodily injury. Murray provided a medical bill for her treatment and submitted it to the district attorney’s office for restitution. Contrary to defendant’s

³ Norman Hering, a person who knew defendant since 2011 because he works at a facility where defendant received services, testified at the preliminary hearing that he recognized defendant from the KTVU video, which he saw on November 14, 2013 when a receptionist at his office was watching the video on the internet. In the video, he saw defendant “stepping on, kicking somebody who appeared to be homeless on the sidewalk.” Sergeant Frost testified that when he interviewed the defendant about the assault after he was arrested, defendant answered “yes” when Frost asked him, “Did you think the lady was dead?” and “So, you thought you killed her?”

argument, the fact that Murray did not take it on herself to seek medical treatment cannot be dispositive of whether defendant should be responsible for her medical bill. There might be many reasons why a victim might not seek medical care or even transportation to medical care. The victim might be a minor child or an incompetent adult or someone just not thinking clearly. The fact that someone else urges a victim, even over her objection, to seek medical treatment simply cannot be a basis to invalidate a restitution condition on the ground that it is not related to the crime. Here, Murray was known to the police department to be a chronic alcoholic and homeless. There may have been myriad reasons why Murray did not want to subject herself to medical scrutiny or possible confinement in a hospital setting, or why, even after seeing the video of her assault, she did not have the wherewithal to bring herself in for treatment.⁴

The fact that Murray did not obtain medical treatment until November 19, when she was driven to a hospital emergency room by a police officer, does not mean that the medical treatment was not necessitated as the result of defendant's conduct. Commonsense tells us that there are many reasons why an assault victim might obtain medical treatment for the first time only weeks after an assault, including that the symptoms did not manifest themselves, or the victim thought the symptoms might go away with time, or the symptoms got worse.

Defendant's argument that the restitution condition should be stricken depends on the premise that the trip to the hospital was motivated by the police officer's desire to investigate the case, combined with the argument that police investigative costs cannot be the basis for restitution. Defendant characterizes the medical treatment as Frost's "zealousness and tenacity in attempting to confirm injury to Murray." But there is no

⁴ Defendant speculates that Murray's crying at the police station on November 12 when she watched the video of defendant assaulting her was "likely due to sadness, not from any discomfort she might have been experiencing." There is no support for this inference. To the contrary, if, as defendant recites, Murray had earlier denied being assaulted or not remembered what happened to her, she certainly saw what happened to her when she saw herself on the video, and this would have given her reason to associate the pain in her head and the inside of her ear with defendant's assault.

evidence that the trip to the hospital was for investigative purposes. Frost's testimony at the preliminary hearing was that he went to see Murray on November 19 to tell her that defendant had been arrested, nothing more. Moreover, this was not the first time it had occurred to Frost that Murray ought to seek medical treatment. He had repeatedly offered it to her on November 12, and she refused. When, a week later, Frost learned that she still had not followed up, he took it upon himself to take Murray, a homeless victim, to the hospital. Judge Sullivan impliedly or expressly found that the trip to the hospital was to diagnose and treat a victim, and not for police investigative purposes, when he imposed restitution and signed Judicial Council form CR-110 giving the victim what was in effect a civil judgment in her favor.

Further, the cases cited by defendant provide no support for his argument. In *People v. Torres* (1997) 59 Cal.App.4th 1, 4-5 (*Torres*), the Court of Appeal reversed an order of restitution to a police department under section 1202.4, which provides for mandatory restitution for “ ‘direct victims,’ ” concluding that a law enforcement agency that spent \$1,425 to purchase illegal drugs in the course of investigating a defendant's criminal activity was not a “ ‘direct victim of a crime’ ” entitled to receive restitution from a defendant after he pled guilty to selling methamphetamine. In *People v. Rugamas* (2001) 93 Cal.App.4th 518, the Court of Appeal upheld an award of restitution as a condition of probation under section 1203.1 requiring defendant to pay in excess of \$6,000 for medical bills incurred by the police department for defendant's hospitalization and treatment after he was hit with rubber bullets. (*Id.* at p. 521.) Rugamas, who pled no contest to brandishing a deadly weapon to avoid arrest, was arrested in his front yard, intoxicated and holding a machete. When he would not drop the machete despite repeated requests, when he would not obey orders not to go back inside the house, and when officers were concerned there were weapons inside the house and defendant might create a “barricade situation,” an officer shot Rugamas with rubber bullets. The Court of Appeal in *Rugamas* rejected the argument that the restitution was unauthorized because the bills were solely due to the officer's decision to carry out his duties as he did, and thus were not reasonably related to the crime for which defendant had been convicted.

The court “fail[ed] to see a distinction. The officer would not have had to carry out those duties absent defendant’s criminal behavior.” (*Id.* at p. 523.) The *Rugamas* court also distinguished *Torres*, noting that “[t]he government may be the beneficiary of restitution under section 1203.1 if it has incurred actual loss due to the crime, excluding those general costs of prosecuting and rehabilitating criminals.” (*Ibid.*) Taken together, *Rugamas* and *Torres* do not address restitution for felony assault victims such as Murray, nor do they address denying restitution to a homeless crime victim on the theory that the police officer’s motive for taking her to obtain medical treatment converts her medical bill into a cost of investigation for which the defendant bears no responsibility.

We are satisfied that the record in this case supports the trial court’s discretion in ordering defendant to pay Murray’s hospital bill as restitution. Defendant admitted that he assaulted Murray with force likely to cause great bodily injury. He agreed to pay victim restitution as part of the plea. On the record before us, defendant cannot establish that the restitution condition “ ‘has no relationship to the crime of which the offender was convicted.’ ” (*Lent, supra*, 15 Cal.3d at p. 486.)

DISPOSITION

The judgment is affirmed.

Miller, J.

We concur:

Kline, P.J.

Stewart, J.

A146343, *People v. Chase*